IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2454 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

H.I. PATHAN

Appearance:

1. Special Civil Application No. 2454 of 2002

MS ARCHANA U AMIN for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/03/2002

ORAL JUDGEMENT

Heard learned advocate Ms. Archana Amin for the petitioner corporation. The petitioner corporation has challenged the award made by the Industrial Tribunal, Nadiad in Reference (IT) No. 61 of 1998 dated 6th July,

2001 wherein the Tribunal has modified the order of punishment dated 31st August, 1994. This Court has issued rule and it was made returnable on 21st March, 2002, by order dated 19.2.2002 and while issuing rule, ad.interim relief in terms of para 9(C) was granted by this court. Notice of rule issued by this Court has been served upon the respondent but the respondent has not appeared before this Court either in person or through any advocate and, therefore, the matter has been taken up for hearing in absence of the respondent.

During the course of hearing, learned advocate Ms. Amin appearing for the petitioner has submitted that the tribunal has committed gross error in interfering and modifying the order of punishment. According to her, the punishment imposed by the corporation is reasonable looking to the misconduct which has been found tobe proved against the respondent workman. She has also submitted that the tribunal has no power or authority to reduce the punishment imposed by the corporation. According to her, the tribunal has erred in not applying its mind in respect of the misconduct which was found to be proved and, therefore, the order of the tribunal is required to be quashed and set aside.

I have considered the submissions made by Ms. Archana Amin for the petitioner corporation. It was alleged against the respondent workman that while he was working as a helper in the work shop depot on 14th November, 1993 at Kheda in first shift, at that time, the bus was unauthorizedly driven and he dashed the bus with the compound and the wall was damaged and on that basis, report was made against the respondent workman and he was served with the chargesheet and, thereafter, inquiry was held against him and thereafter, punishment was imposed upon the respondent workman by order dated 31st August, 1994 to place him in the minimum time scale of helper for a period of one year. The damage caused to the wall was quantified by the corporation at Rs.300.00. Said order of punishment was challenged by the workman concerned before the tribunal by raising industrial dispute. Before the tribunal, the respondent workman has not challenged the validity of the inquiry but the findings were challenged. Before the tribunal, the workman concerned has produced record of inquiry at Exh. 8 and, thereafter, the tribunal has examined the merits of the matter on the basis of the evidence led before it in the departmental inquiry. This aspect has been discussed by the Tribunal in para 5 of the award. The tribunal has concluded that because of this accident, the respondent was initially transferred from Kheda to Balasinor and

thereafter, after he reported at Balasinor, it was found that he was suffering from cancer. The tribunal has, after examining and reappreciating the oral evidence led in the departmental inquiry held against the respondent workman, come to the conclusion that the findings recorded were found to have been proved and thereafter, the tribunal has examined the question of punishment, whether it is justified according to the gravity of misconduct or not. The tribunal after considering the gravity of misconduct and also after considering the 18 years service put in by the respondent, has found that the punishment imposed upon the respondent workman is unreasonable and unjustified and, therefore, considering the damage caused to the wall and the vehicle, the tribunal has reduced the punishment for a period of six months without cumulative effect in the time scale of the post of helper.

I have perused the entire award. The tribunal has given reasons in support of its award. The tribunal is vested with such powers to modify or reduce the punishment if it is found to be unreasonable and harsh in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947. This aspect has been examined by this Court in case reported in 1992 (2) GLH 354 and 1992 (1) GLH 432 wherein this Court has held that the powers under section 11-A can in cases other than dismissal, discharge or termination and, therefore, according to my opinion, the tribunal has not committed any error while passing the impugned award. Ms. Amin, learned advocate for the petitioner corporation has not been able to point out any jurisdictional error and/or any irregularity committed by the tribunal warranting interference of this Court in exercise of the powers under Article 226 and/or 227 of the Constitution of India and as such, there is no substance in this petition and is required to be dismissed.

For the reasons recorded hereinabove, this petition is dismissed. Rule is discharged. Ad.interim relief granted earlier shall stand vacated. There shall be no order as to costs.

21.3.2002. (H.K. Rathod,J.)
Vyas